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CURRENT TOPICS

The New Year Honours

PRE-EMINENT among the honours of legal interest conferred in the New Year Honours is the barony of Sir RAYMOND EVERSHED, M.R., whose great part in shaping the current reforms of procedure is fresh in the minds of all. From a fuller list at p. 17, *post*, we have space here only to note with much pleasure that solicitors are as usual prominent among those honoured by Her Majesty: Colonel CHARLES EDWARD PONSONBY becomes a baronet, Major REGINALD BULLIN and Mr. ARTHUR REGINALD ASTLEY WESTON are made knights bachelor, and Alderman H. N. BEWLEY, Mr. W. M. JONES and Mr. T. D. SHEPHERD receive the C.B.E. To all these, and the other lawyers whose names appear in the list, we tender congratulations.

New County Court Jurisdiction

THE New Year 1956 sees the inauguration of a modern revolution in civil procedure, involving the transfer of a substantial part of the work of the High Court to the county courts. The official guess as to the extent of the work to be transferred is that eighteen new judges will be needed, but it remains to be seen whether eighteen will be enough. More registrars and increases of staff will be necessary if some county courts, especially in London and the big cities, are not to become as congested as the High Court was not so long ago. It will be little comfort to the judge or anyone else that he may, of his own motion, under the new Ord. 13, r. 4A, of the County Court Rules (S.I. 1955 No. 1799) direct that the hearing in one of his courts shall take place in some other court of which he is judge, if he has not much hope of it being reached in that other court. Some awful pre-war expereiences of transfers by consent from court to court still live in the memory of some practitioners. From their not unimportant point of view the allowances for adjournments for want of time, whether for solicitors or counsel, are not generous. The transfer of jurisdictions has necessitated the creation of a new scale of county court costs. The new Scale 4 for the new work offers the registrar a wide discretion in a number of items, the most noteworthy being that he may allow such sum as is fair and reasonable in all the circumstances, not exceeding £40, for preparing for trial. Counsel's fee is £7 12s. to £27. In the difficult days ahead we trust that county court registrars will not apply any different standards of taxation to legally aided cases from those applicable to other cases.

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Guilt without Blame

THE tide is flowing steadily in favour of the idea that *mens rea* should be an essential element in every criminal offence. During the past ten years the courts have been reluctant to hold that statutory provisions impose absolute criminal liability and the tide even seems to be entering government departments. In the new Agriculture (Safety, Health and Welfare Provisions) Bill there is a clause which reads: "It shall be a defence for a person charged with a contravention of a provision of this Act or of regulations thereunder to prove that he used all due diligence to secure compliance with that provision." It is difficult at this stage to assess precisely the effect of this clause since the Bill proposes to leave all matters of substance to be dealt with by regulations, but it is clear that it will not be possible, if the new Bill duly passes, for persons to be convicted of crimes for which they are without blame. This defence would not apply to civil proceedings for breach of statutory duty so that, if regulations are made which impose absolute liability similar to that imposed by s. 14 (1) or s. 25 (1) of the Factories Act, 1937, the plaintiff will be in no worse position than a plaintiff under the Factories Acts. The purist might argue that it is wrong that the burden of proving diligence should be on the defence. There are, however, excellent precedents for placing on defendants the burden of proving facts which lie peculiarly within their knowledge and the burden of proof which rests on a defendant in such circumstances is lighter than that which rests on the prosecution. We welcome this clause as evidence of a more liberal attitude.

Christmas Week and the Special Occasion

THE LORD CHIEF JUSTICE has a crisp style that attracts the reporters, but notwithstanding the piquancy of his rhetorical query in *R.* v. *Cheltenham Justices; ex parte Martin* (*The Times*, 21st December, 1955) as to how anybody could say that Christmas week was a special occasion, he was putting in the fewest possible words what the Divisional Court unanimously decided. The magistrates had made a special order of exemption under s. 107 of the Licensing Act, 1953, in favour of a licensee of business premises consisting partly of shops, extending the permitted hours for selling wines and spirits from 2.30 p.m. to 6 p.m. on the seven weekdays before Christmas. "You will have shopping week or Mothers' Day next," Lord Goddard said, and added that the section was meant to cover things like point-to-point meetings. The fact that people are shopping "rather vigorously" does not make an occasion special, he further observed in the course of argument. When counsel quoted Lord Goddard's own remark in *R.* v. *Brighton Borough Justices; ex parte Jarvis* [1954] 1 W.L.R. 203, at p. 207, that Christmas shopping might be a special occasion, Lord Goddard quoted in reply: "There ought to be a Statute of Limitations to protect judges against their *obiter dicta*." In his judgment he said: "Of course, everyone knows that that section [107] was designed for race meetings, cricket matches and things like that, where people want a means of refreshment." He was far from saying that Christmas Day could not be a special occasion, but this application was simply for people shopping. Although the *Observer* (25th December, 1955) commented: "In the objective eyes of the law, Christmas, it seems, is not a special occasion," the decision was not that Christmas, but that Christmas week shopping, is not a special occasion.

Estate Agents and Professional Etiquette

A USEFUL exchange of views took place between the President of The Law Society, Mr. W. CHARLES NORTON, and the President of the Incorporated Society of Auctioneers and Landed Property Agents at a dinner at Kingston on 21st December, 1955, given by the South-West London branch of the latter society. Referring to the rules of conduct governing their respective professions, Mr. Norton admitted that the matter was easier for solicitors, whose profession was governed by statute, than for auctioneers and estate agents, whose profession was largely dependent on membership of one or other of the recognised bodies. He said: "We appreciate that the estate agent often finds himself in competition with one who owes no allegiance to any recognised body and is therefore free from rules of conduct. In this respect, I believe we solicitors could help, as far as lies in our power, by refusing to have dealings with such people." Mr. D. GILBERT said in reply that the high reputation for integrity enjoyed by lawyers was due to the function which The Law Society performed. The good order of legal practice was the envy of those who practised in the estate profession, in which there was, unfortunately nothing to prevent even the ex-jailbird, the wise guy or slick salesman from setting up in business. Thirty years had passed since the first attempts to remedy that situation. In spite of failure, the organised professional bodies should continue to discipline their members.

Architects as House Agents

A RULE debarring an architect from carrying on business as a house agent or auctioneer came into operation on 1st January. In explanation of the rule, the Architects' Registration Council has stated that, although it is its declared policy to separate the practice of architecture from the commercial business of house agency and auctioneering, it has no intention of interfering with architectural superintendents at present employed by house agents or auctioneers. In the event of such an appointment ceasing through the architect's resignation, discharge or death, the Council has stated that it is undesirable that another architect should accept this appointment if the firm of house agents or auctioneers intend to continue to style themselves "architects."

Compensation for Subsidence

THE present position with regard to compensation for mining subsidence is that houses affected are either compensated or repaired by the Coal Board up to a maximum rateable value of £32. It appears that there is anxiety in mining areas about the effect on this of the new valuation. Early in 1955, the Government promised that they would bring within the scope of the forthcoming review of local government finance the cost to local authorities of mining subsidence in seriously affected areas, if no comprehensive solution emerged from the re-examination of the problems promised by the Minister. A Member of Parliament has asked the new Minister of Fuel and Power to receive a deputation to discuss the effect on compensation for mining subsidence of the new rating valuation lists. It is to be hoped that the matter will receive prompt consideration and that early action will be taken to avoid hardship.

OPPOSING A NEW RATING ASSESSMENT—I

UNDER the Local Government Act, 1948, Pt. III, the valuation of rateable hereditaments is now carried out by the Valuation Department of the Board of Inland Revenue. Valuation officers of the department have just completed the new valuation lists of the first revaluation since the war, and have sent them to the rating authorities, the local councils (Rating and Valuation (Miscellaneous Provisions) Act, 1955, s. 1 (3)). There is now no provision for them to be open to objection following deposit by those authorities. Nor is notice of any new or increased assessment required to be given to any ratepayer affected (ss. 35 to 38 of the 1948 Act are repealed by s. 1 (1) of the 1955 Act). The valuation officer even has power to alter the list between now and 1st April next, when it comes into force, without giving notice to the ratepayer. But this power is confined to cases in which there has been a material change of circumstances (defined in the Act) since the part of the list was prepared which is affected by the change of circumstances (s. 1 (4) of the 1955 Act).

The rating authority has deposited the list at its offices (s. 39 (1) of the 1948 Act). It has given notice of the list and of the rights of persons to inspect it and to make proposals for altering it (s. 1 (6) of the 1955 Act). In general, these notices, and information and leaflets given to ratepayers, have been designed to let them know what the list is about and what they can do about it.

What can be done now

Every ratepayer, including one who pays his rates in his rent, and also any person authorised to act on behalf of a ratepayer, has the right to inspect the valuation list, and to make copies of it and extracts from it. He may do this in ordinary office hours (and also at other times, where the local council has made the necessary provision, as it has done in some instances) and without charge (Rating and Valuation Act, 1925, s. 60 (1)). He also still has the power to inspect the current list, which continues in operation until superseded at the end of March, and in general he will also be allowed to do this without charge, although there may strictly be power to make a charge in this instance under the terms of s. 60 (1). In the inspection the ratepayer may be assisted by staff of the rating authority in finding his own assessment and those of comparable properties. But he will not be able to obtain information as to how the assessments are arrived at either from the rating authority (because it did not prepare the list) or from the valuation officer (because he will be too busy dealing with other matters up to the end of March). Ratepayers are asked not to approach the valuation officer about their new assessments before April.

Ratepayers cannot take any proceedings in respect of the valuation list yet. There are various things which they can do at once, however, in preparation for proceedings when they are open. They can make a comparison between the increase in their assessments and that for the rating area as a whole and in administrative counties that for the county as a whole. In a county borough, if there has been a greater percentage increase in the rateable value for the borough as a whole than in their particular case, there is a probability that they will be no worse off or even better off. In a county area this will be so if there has been a greater percentage increase in both the county rateable value and the rating authority's rateable value. But where the percentage increase in the county differs from that in the rating area, a special calculation is necessary to determine the exact effect. The increases in rateable value can normally be obtained from the local council offices. Those for county boroughs and administrative counties were published by the Ministry of Housing and Local Government on 2nd January, 1956, and are reproduced in *Rating and Income Tax* of 5th January. The probable saving to some ratepayers arises from the anticipated reduction in rate poundages referred to in a previous article (99 SOL. J. 881).

The actual effect of the revaluation on the individual ratepayers can be worked out more accurately when the rating authority decides the rate in the £ for 1956–57, late in March or early in April. The new rate multiplied by the new rateable value will give the amount of rates the ratepayer will have to pay, which can be compared with those of last year. The demand note arriving later should confirm the figure.

In the meantime the ratepayer can be collecting information about his own and other ratepayers' properties and assessments. He can be sounding others about the possibility of joint action. He can be considering whether to appeal at all, and, if so, whether alone (e.g., because his property is appreciably different from any others) or in conjunction with the occupiers of comparable hereditaments (e.g., a street, a housing estate, or a shopping area). He can be deciding whether and to what extent he will require the services of a valuer or rating surveyor. On all these points he may require advice from his solicitor.

Appeals

Only on 1st April, 1956, when the new list comes into force can the ratepayer take any steps in respect of it. He can then make a proposal to alter it (s. 40 (1) of the Local Government Act, 1948). This proposal must be in the prescribed form (s. 41 (1) as re-enacted in Sched. I to the 1955 Act). A new form has been prescribed for the new lists by the Valuation Lists (Forms of Proposals for Alterations) Regulations, 1955, and it differs in many ways from the existing forms, notably in that there is now one form for all purposes, the highly complicated forms previously applicable to claims that hereditaments were agricultural, industrial or freight-transport hereditaments having been abolished.

The new form is essentially simple, although the number of boxes or frames in which particulars must be inserted may initially be disconcerting. The two points requiring special attention are the actual alteration proposed and the grounds of the proposal. There is a decision that the actual alteration need not be stated (*Jollys (Oldham), Ltd.* v. *Almond* (1951), 44 R. & I.T. 374; 22 D.R.A. 60, following earlier decisions on rather different provisions in the Rating and Valuation Act, 1925). But there are grounds for the view that in so far as applying to current proposals, the decision in that case was *obiter*, and it is better in practice to state the exact alteration asked for. A lesser alteration can be conceded later. The grounds of proposal can be stated simply (*R.* v. *Winchester Assessment Committee* (1948), 41 R. & I.T. 348; 19 D.R.A. 183 (C.A.)), but they should plainly show the basis of the alteration sought, e.g., that the gross value is in excess of the true letting value of the property, or that the property is occupied as two hereditaments. It is advisable always to say that the assessment is "incorrect" and inadvisable (if not fatal) to say only that it is "unfair" (*Ladies' Hosiery & Underwear, Ltd.* v. *West Middlesex Assessment Committee* (1932), 16 R. & I.T. 212; 8 D.R.A. 313). The proposal can be signed by a solicitor.

The proposal must be sent to the valuation officer, *not* to the rating authority (s. 41 (1) of the 1948 Act, as re-enacted by Sched. I to the 1955 Act). It must reach him not later than the end of the rate period beginning on 1st April, 1956, i.e., before 30th September, 1956, with a half-yearly rate and before 31st March, 1957, with a yearly rate. This is to ensure that any alteration of the valuation list arising under it will have effect from 1st April, 1956.

A proposal to reduce an assessment made before 31st March, 1957, has an immediate effect on the recovery of rates. If the new value of the hereditament exceeds that as last previously determined, and the hereditament has not been substantially altered since it was so determined, the rates recoverable will not exceed those payable in 1955–56 until the proposal is "settled" (s. 1 (7) of the 1955 Act). The proposal is "settled" when the valuation list is altered to give effect to it or to an agreement made in consequence of it, or when an appeal or arbitration arising out of it is determined, or it is withdrawn (s. 1 (8)). As soon as the proposal is so settled, rates will be payable in full on the new assessment as determined. But the concession is an important one to ratepayers faced with large increases of assessments.

On receiving a proposal, the valuation officer sends copies to the rating authority and to the occupier and owner (if he is liable for the rates to the rating authority) (s. 41 (2) of the 1948 Act, as re-enacted in Sched. I to the 1955 Act).

The procedure for dealing with a proposal is the subject of somewhat complicated provisions in s. 41 of the 1948 Act, as amended by s. 2 of, and Sched. I to, the 1955 Act. It can perhaps be summarised as follows: (1) The proposal may be unconditionally withdrawn at any time up to the determination of any appeal arising out of it. It would seem in such case to be of no effect. (2) It may not be objected to by anybody within twenty-eight days of receiving a copy and the valuation officer may be satisfied that it is well founded. In such case he alters the list in accordance with the proposal. (3) It may not be objected to by anybody or dealt with under (2). In such case the valuation officer must at the end of six months alter the valuation list to give effect to it. (4) It may be the subject of an agreement for the valuation list to be altered. The persons who must be parties to such an agreement are: the valuation officer, the proposer, any objector, the occupier of the hereditament, the owner if liable for rates on it to the rating authority, and the rating authority (unless it has given notice to the valuation officer dispensing with its agreement in the particular case or class of case). The agreement may provide for the valuation list to be altered in a different way from that proposed and the valuation officer will cause that to be done. (5) The proposal may be objected to by one of the parties to whom a copy was sent, or an owner or occupier of any part of the hereditament, within twenty-eight days of receiving the copy. If any such objection is not withdrawn the valuation officer must within six months of the proposal send a copy of the proposal and of every notice of objection to the clerk of the appropriate local valuation panel. (6) Finally, the proposal may be objected to by the valuation officer himself. He has five months in which to object. He sends a copy of his objection to the proposer and also a notice that unless the proposer withdraws the proposal within fourteen days, he will be treated as intending to appeal against the objection. Within fourteen to twenty-eight days of sending such notice the valuation officer must send copies of the proposal, of his notice to the proposer and of all objections thereto not withdrawn to the clerk of the appropriate local valuation panel. In each of these two cases the valuation officer gives the proposer, any objectors and the rating authority notice that he has sent the copy to the local valuation panel. The proposal is then in effect treated as an appeal against all the objections to it.

F. A. Amies.

PROTECTING THE NATION'S LARDER

NEW FOOD AND DRUGS LEGISLATION

We begin 1956 with new food and drugs legislation—new in the shape of a consolidated Act eliminating the Food and Drugs Act, 1938, the Food and Drugs (Milk, Dairies and Artificial Cream) Act, 1950, the Food and Drugs Amendment Act, 1954, sections of the Slaughterhouses Act, 1954, and the Slaughter of Animals (Amendment) Act, 1954. The Act is supplemented by the Food Hygiene Regulations, 1955, designed to strengthen the statutory powers of a local authority concerning matters specified in s. 13 of the new Act. An opportunity of studying the main alterations in the statutory powers was afforded by the Amendment Act of 1954, a piece of legislation which was never operated.

For those who administer the law of food and drugs and for those mainly concerned with defence in legal proceedings, ss. 1 to 3 and 9 were the kingpins of the 1938 Act, and it was the decisions interpreting these sections that provided most of the subject's interest for the lawyer. Section 1 of the new Act deals with the addition and subtraction of ingredients to and from food and there is an important addition to the section. The use of any substance as an ingredient or the subjection of food to processing or treatment which in either case would render the food injurious to health is forbidden. In determining whether an article of food is injurious to health we now have to pay regard not only to the probable effect of that article on the health of a person but also to the probable cumulative effects of articles of substantially the same composition on the health of a person consuming such articles in ordinary quantities (s. 1 (5)). This new conception of offences in relation to the addition or subtraction of ingredients must inevitably produce a clash of opinion among analysts and others as to the effects on health of preservatives, colouring matters and chemicals generally, more especially having regard to the tremendous development in this aspect of food manufacture and the acknowledged inadequacy of knowledge in regard to many of the chemicals now used. The ability of experts to differ is likely to be seen at its best in prosecutions under this section.

Section 8 is one of a group of sections under the heading of "food unfit for human consumption," and in the light of recent events is unlikely to be misused as was the old s. 9 for the prosecution of offences which could not in any sense be construed as resulting in unsound food.

Section 13 (regulations as to food hygiene) is referred to in more detail later, but it is opportune at this point to draw attention to subs. (5), which deals with the apportionment of claims concerning expenditure on work of a structural character required by the regulations, made against any other person by the person who has incurred the expenditure.

We may look for many county court cases in which liability is in dispute.

Although restricted to catering premises, the power of the court to disqualify caterers convicted under the regulations from using specific premises (s. 14) is of considerable interest. Subject to due observation of the requirements of the section, disqualification can be for a period of two years. Only through time and experience can we assess the value of this section, but at sight it would appear inadequate. There seems to be nothing to prevent the use of those same premises by any other person, or to prevent the same person operating in other undesirable circumstances.

Milk, dairies and artificial cream; Slaughterhouses

Sections 28 to 48 constitute Pt. II of the Act and re-enact the provisions previously contained in the Acts of 1938 and 1950 dealing with milk, dairies and artificial cream, but with a number of new clauses designed to combat certain undesirable practices for which adequate legislative control had previously been lacking. Section 29 provides for the making of regulations which it is interesting to note may include requirements for the staining of milk obtained from prohibited sources and an embargo upon the wrongful use of milk churns. There is also an important power to prohibit the sale for human consumption of milk obtained from cows milked at any stage of a journey to or from a dairy farm, at a slaughterhouse or knacker's yard or in a market.

Sections 62 to 80 refer to slaughterhouses and knacker's yards, and amongst other matters re-enact the provisions of the Slaughterhouses Act, 1954, together with the licensing provisions of the 1954 Amendment Act. The responsibility of licensing private slaughterhouses remains with the local authority who *must*, before granting a licence, arrange for an officer to inspect and report upon the conditions. If a local authority are not satisfied that the premises concerned meet the requirements of the law, then provision is made for refusal of a licence (s. 65).

In the case of applications for licences made before 1st July, 1956, licences may be given for any period to 31st July, 1959. In any other circumstances the period of licence cannot extend beyond thirteen months (s. 67).

The new Act declares the power of a local authority to provide and to operate a public slaughterhouse (s. 71). Should a local authority provide a public slaughterhouse, then power exists to close the private slaughterhouses within their district by ceasing to renew slaughterhouse licences already in force (s. 75). Where a local authority are satisfied that sufficient slaughtering accommodation is available, they may by resolution declare that no further licences shall be granted or renewed in respect of any premises not licensed on the date when the resolution takes effect (s. 76). Claims for compensation arising through action under s. 75 may be made by any person having an interest in those premises, or in any land held therewith, being an interest of which the value is reduced in consequence of the resolution (s. 78).

Sampling

The powers of sampling have been amended (s. 91) and sampling officers may "take" not only a sample of any food but also of any substance capable of being used in the preparation of food. That the word "purchase" is not used should be noted.

The time limit for the institution of proceedings remains at twenty-eight days in the case of milk samples but in other cases there is an increase to two months (s. 108). The maximum permitted fine is increased to £100, a circumstance which may have an influence on such practices as the watering of milk.

The Food Hygiene Regulations

In accordance with s. 13 of the new Act, regulations have now been made (S.I. 1955 No. 1906) in order to secure the observance of sanitary and cleanly conditions and practices in connection with the sale of food for human consumption or the importation, preparation, transport, storage, packaging, wrapping, exposure for sale, service or delivery of food intended for sale or sold for human consumption. They vary substantially in form and requirement from the original draft, and many of the matters which it was hoped to find have now either been relegated to proposed codes of practice or omitted altogether. The degree of increased control which the regulations will provide can be assessed only in the light of experience, but certainly they must be acknowledged to strengthen the law relating to food hygiene which previously consisted of s. 13 of the 1938 Act and the model food byelaws made under the provisions of s. 15.

That schools, hospitals and institutions should be included in the definition of "business" is a just requirement which broadens the scope of the regulations and negatives the previously advanced argument that food supplied as meals in such premises is not sold. "Food" has a broadly similar definition to that ascribed to it in s. 135 of the 1955 Act, but with the exclusion of milk, cream or separated milk (but not dried or condensed milk), thus providing an exemption for a class of food for which legislation is already in existence. "Food business" is a very broad definition (reg. 3) bringing within the terms of the regulations any trade or business for the purpose of which any person engages in the handling of food, but provides a number of exemptions which are in the main logical (e.g., docks, wharves, carriers, etc.).

The use of a completely open stall for food sales is clearly precluded (reg. 27). As a defence to proceedings proof that such steps as are reasonably necessary have been taken to avoid contamination may succeed over proof of contamination. Convictions may prove difficult to secure, especially where flies or insects are concerned.

In reg. 11, dealing with the notification of specified infections suffered by persons engaged in the handling of food, no direct provision is made concerning enforced absence from work in the notified cases, a medical officer of health thus having to rely upon his existing powers. In those areas (and they are many) where local Acts containing assistance to cover the question of compensation for enforced absence from work are not available, medical officers have frequently been concerned as to how to deal with the problem which arises.

Regulation 5 is a provision which one might prophesy will become the most popular for the institution of proceedings and introduces, possibly for the first time, the sanitary inspector as the expert witness, certainly as the man upon whose evidence the possibility of successful proceedings or successful defence will hinge. It prohibits the carrying on of food business at insanitary premises or in places whose situation, construction or condition exposes food to the risk of contamination.

Regulation 32 sets out in detail the list of offences whilst reg. 33 details the penalties for offences against the regulations. These remain as in s. 106 of the 1955 Act and do not provide for any modification in the case of a first offence, any discretion in that direction being a matter for the court.

The relegation of many important matters to proposed codes of practice (s. 13 (8) of the Act) is felt to be unfortunate both because of the absence of any statutory importance and because of the difficulty of achieving uniform standards of practice. The opportunity might also with advantage have been taken to dispense with the food hygiene byelaws, especially as they are overlapped in many respects by the new regulations. However, it appears to have been felt that they might usefully be retained to operate in conjunction with the regulations, and indeed in certain cases prosecutions could be instituted under the provisions of both.

Enforcement proceedings

Despite the number and nature of the legislative changes it would be unwise to forecast any substantial change in the nature of legal proceedings. More recently the bulk of such cases have been concerned with adulterated milk, milk fat deficiencies, meat content of sausages, articles not being of the nature and substance required, and unsound food. The newer legislation will bring few changes in this respect, but it is fair to assume that there will be an equally frequent use of proceedings taken under s. 8. Subject to the report of their sanitary inspectors, local authorities will feel on reasonably safe ground in laying information for proceedings in relation to alleged offences of this character. For the rest, one would surmise a spate of straightforward prosecutions for direct contravention of the Food Hygiene Regulations. The passing of another twelve months will enable a more proper assessment of the advantages brought about by amendment and consolidation; for the moment we can but hazard our own individual forecasts.

A. G. D.

A Conveyancer's Diary

EASEMENT MUST BE CAPABLE OF FORMING SUBJECT-MATTER OF A GRANT

A RIGHT can only exist as an easement in the English law if it is capable of forming the subject-matter of a grant. This is one of the four essential qualities of an easement laid down in the passage from Cheshire on Real Property which was adopted as both correct and exhaustive by the Court of Appeal in the *Ellenborough Park* case. It will be recalled that in the judgment of the court, which he delivered, the Master of the Rolls expressed some doubt concerning the exact significance of this condition. But, he went on, for the purposes of the case before the court, this condition involved three cognate questions: first, whether the rights purported to be given were of too wide and vague a character; secondly, whether, if and so far as effective, such rights would amount to rights of joint occupation or would substantially deprive the owners of the park of proprietorship or legal possession thereof; and, thirdly, whether such rights, if and so far as effective, constituted mere rights of recreation, possessing no utility or benefit. An affirmative answer to any of these questions would, I conceive, have involved the conclusion that the right to enjoy Ellenborough Park as a pleasure garden granted on the occasion of the original conveyance of a plot on this estate which was taken as typical did not satisfy the condition which I have just mentioned.

Three negative answers

The construction which the court adopted of this deed was summarised by me last week. As regards the first of these questions (whether the rights were too wide and vague), the view of the court was that that construction afforded the answer; for the court had treated the right as being both well defined and commonly understood. And the court went on to say that in these essential respects (meaning, I think, the three sub-questions into which consideration of the question whether the right was capable of forming the subject-matter of a grant had been split up) the right to use a pleasure garden as granted "might be said to be distinct from the indefinite and unregulated privilege which, we think, would ordinarily be understood by the Latin term '*jus spatiandi*,' a privilege of wandering at will over all and every part of another's field or park, and which, though easily intelligible as the subject-matter of a personal licence, is something substantially different from the subject-matter of the grant in question, namely, the provision for a limited number of houses in a uniform crescent of one single large but private garden."

The court's interpretation of the deed also, in their view, provided the answer to the second question (whether the rights granted amounted to rights of joint occupation, etc.). They no more amounted to that, no more excluded the proprietorship or possession of the owners of the park, than a right of way granted through a passage, or than the use by the public of the gardens of Lincoln's Inn Fields amounted to joint occupation of that garden with the owners (the county council, in that case) or involved an inconsistency with the council's possession or proprietorship. Reference was then made to the recent decision of Upjohn, J., in *Copeland* v. *Greenhalf* [1952] Ch. 488, where the right claimed was one to leave vehicles for an indefinite time upon an undefined portion of land (for purposes of repair there by the claimant). The Court of Appeal thought that the facts in that case bore no real relation to the case before them.

The third of the questions rested primarily on a proposition stated in Theobald's Law of Land (2nd ed., 1929, at p. 263, a passage also referred to by Danckwerts, J., in his judgment in the present case in the court below). This stated that an easement "must be a right of utility and benefit and not one of mere recreation and amusement." Two cases are cited in support of this proposition in the work referred to. Danckwerts, J., mentioned both in his judgment, in a manner indicating strongly his view that, at the least, they did not justify anything like so wide a statement, but he did not expressly say so; on the other hand, towards the end of his judgment, that learned judge said that he had a leaning towards the intention of the parties to transactions being carried out, and that unless he was compelled by the state of the authorities he was not anxious to deprive the owners of plots on this estate to whose predecessors the right to use and enjoy the park had been granted of this right, and his decision that the right was capable of existing as an easement therefore indicated that in his view this passage

from Theobald's Law of Land was not an accurate statement of the law. The Court of Appeal expressly took this view. But in any case, in the view of the Court of Appeal, the right to use a garden of the character in question in the case could not be called one of mere recreation or amusement. The right was one appurtenant to the surrounding houses as such, and constituted a beneficial attribute of residence in a house as ordinarily understood. Its use for the purposes not only of exercise as such but also for such domestic purposes as, for example, taking out small children in prams, could not fairly be described as one of mere recreation or amusement; it was clearly beneficial to the premises to which it was attached.

This was sufficient to decide the question whether the right under consideration could form the subject-matter of a grant: it could, and did. The decision is a most valuable one. It is on a point not before the subject of direct authority. It touches on a matter which, despite the increasing tendency of local authorities to take over the management of private or restricted gardens and squares in urban areas, must affect a very large quantity of property in the country. It is, if one may say so, eminently sensible and practical. And if the layman, and perhaps even the occasional lawyer, should question the necessity of taking such a long road to reach a conclusion which in his view was inevitable, there is a great deal to be said for a decision which deals with all possible points of objection to its conclusion. This case was argued with great thoroughness, and the basis of the conclusion is thereby greatly strengthened.

Jus spatiandi an easement?

And now, finally, for some observations on *jus spatiandi*. It will be remembered that before Danckwerts, J., the right of the individual plot owner was put forward as an example of a *jus spatiandi*, and it was on that footing that Danckwerts, J., decided the case; at least, he was not deterred from upholding the rights of the plot owners by *dicta* of "so eminent a Chancery judge as Sir George Farwell [or] the statement by the Roman jurist Paul" that a mere *jus spatiandi* is not known to the law (see [1955] 3 W.L.R., at p. 105). His decision was based on two earlier authorities which, in his view, led to the conclusion that these *dicta* were unjustified. In commenting on that decision some months ago I said (99 SOL. J. 575) that it would be interesting to see whether the Court of Appeal (notice of appeal in this case had then already appeared in the list) would consider the problem as one to be decided on principle, i.e., apart from the two decisions on which Danckwerts, J., had based his own decision. Those decisions were *Duncan* v. *Louch* (1845), 6 Q.B. 904, and *Keith* v. *Twentieth Century Club, Ltd.* (1904), 73 L.J. Ch. 545, decisions respectively of the courts of Queen's Bench sitting in Banc and of Buckley, J. (as he then was). Readers may remember that in those earlier articles of mine on this subject I expressed the view that the latter touched on this question of the existence of *jus spatiandi* as an easement somewhat obliquely, and that the former was, to some extent at any rate, capable of explanation in a way which did not necessarily involve any decision on this question. The view of the Court of Appeal now expressed is that *Keith's* case cannot be regarded as having authoritative force, but they agreed with Danckwerts, J., in regarding *Duncan* v. *Louch* as being a direct authority in favour of the existence of *jus spatiandi* as an easement. In so far, therefore, as the right in question in the case before the court constituted a *jus spatiandi*, or something analogous thereto, on this way of looking at the case also the right claimed was upheld.

This part of the Court of Appeal's decision may seem to be very broadly based and to justify the proposition that *jus spatiandi*, in the sense of a right to wander at will over the land of another, has been added to the list of easements recognised by the law. But I am not quite sure whether that is right. Earlier in the judgment of the court which he delivered the Master of the Rolls had referred to the view of the Roman jurist Paul that a right to wander and picnic (*spatiari* and *coenare* were the words he used) was not a servitude, and he went on: "... the exact characteristics of the *jus spatiandi* mentioned by the Roman lawyers has to be considered. It by no means follows that the kind of right which is here in question, arising out of a method of urban development that would not have been known to Roman lawyers, can in any case be said to fall within its scope." All this suggests that, in deciding that the rights claimed in this case constituted a *jus spatiandi* and as such could be upheld as an easement, the Court of Appeal was using the expression "*jus spatiandi*" in a special sense, as signifying the rights of enjoyment of the park which, in their view, the language of the particular grant before the court entitled the claimants to enjoy. It may be, therefore, that to say that *jus spatiandi*, without any limit, is now recognised as an easement, on the authority of the *Ellenborough Park* case, is an over-simplification of this part of the Court of Appeal's decision. This right has not yet been analysed in the light of the essential conditions which an easement must satisfy; it has simply been upheld in a particular case, on the authority of the decision in *Duncan* v. *Louch*, and the particular case is one where the construction of the right in question adopted by the court necessarily placed some limitation on the dominant owner's right to wander at will over the park.

The point is not perhaps of great importance, even if there is substance in it. The kind of right which it was important to establish as an easement was the right to use a communal garden or pleasure ground in the way in which the Court of Appeal held that the grantees of the right in this case and their successors were entitled to use Ellenborough Park. That will cover the majority of cases in which this kind of question is likely to arise. A strict *jus spatiandi* is only likely to be claimed as a public, not as a private, right—for example, over common land; and a claim on the part of the public would raise problems essentially different from anything considered in this case. But, for what it is worth, my view is that the question whether a *jus spatiandi*, without limit, is an easement or not is still open.

"A B C"

Mr. RONALD OWEN LLOYD ARMSTRONG-JONES, M.B.E., Q.C., has been appointed one of the Chancery Visitors (Legal) with effect from 1st February, 1956, on the retirement of Mr. H. C. Meysey-Thompson, C.B.E.

Mr. S. A. BERRY, Town Clerk of Ripon, has been appointed Town Clerk of Kisumu, Kenya.

Mr. HUMPHREY BYRON DOLPHIN, Town Clerk of Glossop, has been appointed Town Clerk of Warwick in succession to Mr. H. C. F. M. Fillmore, who is resigning owing to ill-health.

It is announced by the Board of Trade that Mr. WALTER HAROLD HAIGH has been appointed an Assistant Official Receiver in the Bankruptcy (High Court) Department.

Landlord and Tenant Notebook

RENT TRIBUNALS AND "SERVICES"

WHAT is covered by "services" as the term is used in the Housing Repairs and Rents Act, 1954, s. 40; and when will a Divisional Court grant a writ of certiorari against a rent tribunal? *R.* v. *Paddington North and St. Marylebone Rent Tribunal; ex parte Perry and Others* [1955] 3 W.L.R. 744; 99 SOL. J. 816, is a decision which gives useful guidance on both points.

The section referred to enables landlords of controlled properties with standard rents fixed by pre-1st September, 1939, lettings to seek (by negotiation or by application to a rent tribunal) increases of rent reflecting increases in the cost of services provided by them.

"Services" or maintenance?

Tenants of flats whose rents had been increased by decisions of a tribunal under this provision complained, *inter alia*, that some of the items allowed for were not "services." What that expression covers has caused many practitioners much anxiety: the statute (unlike the Furnished Houses (Rent Control) Act, 1946, which, for its purposes, at least says what it "includes": s. 12) makes no attempt to define it. The "Notebook" discussed the possibilities on 5th February last (99 SOL. J. 88), throwing out some suggestions.

In *R.* v. *Paddington, etc., Rent Tribunal* the respondent tribunal had set out in detail in a schedule the services, contractual and non-contractual, in respect of which they made their award: central heating, constant hot water, passenger and service lifts, lighting and heating of lounge, hall, passages and staircases, porterage, removal of refuse, floor coverings to common parts. It was contended that some of these "services" ought to be regarded as maintenance and not services; we are not told which, and the court did not give us much reasoning on the subject when rejecting the contention; but Goddard, L.C.J.'s "If the landlord has contracted to provide a lift, the maintenance comes under services because the lift has to be worked. It is a service for the tenant," does dispose of the suggestion that there is a contrast. Later, the learned Lord Chief Justice expressed the view that the only one (of the "non-contractual" services) about which there could be the least question was the floor coverings to common parts, but that it was just as much a service as heating and lighting the staircase: ". . . it is an amenity which gives a better appearance to the place. Tenants do not want to walk up uncarpeted stairs, and the provision of carpets seems to be as much a service as anything else."

Perhaps it would be too much of a subtlety to suggest that where an article is provided which both protects the freehold and discharges the functions of an amenity, an apportionment is called for (a suggestion based on *Hall & Co.* v. *London, Brighton & South Coast Railway Co.* (1885), 15 Q.B.D. 505, and put forward in the above-mentioned "Notebook"). Thus, heating and cleaning tend to preserve the freehold, and so do floor coverings which protect staircases. One could contrast the well-known service rendered to Queen Elizabeth I by Sir Walter Raleigh; the depreciation of his cloak was no doubt compensated by the appreciation of his reputation.

The jurisdiction of rent tribunals

The above conclusion implied that there was no error on the face of the order; and when the court was invited to deal with such points as an alleged taking into account of matters which the tribunal ought not to have taken into account (e.g., upkeep of boilers), or that the actual findings were wrong, the answer was that the only ground for the granting of a writ of certiorari was absence or excess of jurisdiction; it could not be granted on grounds which were in truth grounds of appeal. Thus, it was clear that the "somebody from the office of an estate agent" who had represented the landlords before the tribunal had shown up very badly in cross-examination; but the tribunal were not bound to act on his evidence.

The "wholly peculiar powers" given to rent tribunals had, indeed, been gone into by the court before, in *R.* v. *Brighton and Area Rent Tribunal; ex parte Marine Parade Estates (1936), Ltd.* [1950] 2 K.B. 410 (see 94 SOL. J. 29, 348). That was a case in which the court would certainly have interfered if it could have done so; but, as pointed out then and again now, rent tribunals are entrusted with the duty of inquiring; they must give both parties an opportunity of putting forward their views, but are not even bound to hear evidence; they can act on their own views, knowledge and opinions. Knowledge: the point reminds one of the history of trial by jury; a jury, the historians tell us, was originally appointed because of its knowledge of the district, if not of the parties; its functions may still be finding of facts, but the material it uses is very different.

Whether there should be an appeal from a decision of a rent tribunal is a question which has often been raised and discussed, as a glance at the index to vol. 94 of this Journal, heading "Rent tribunals: Appeal from, proposed right of" will show. But in the meantime, as regards certiorari, Atkin, L.J.'s approval of the statement "If the fact upon which the jurisdiction of the tribunal depends be not collateral, but a part of the very issue which the lower court has to inquire into, certiorari will not be granted, although the lower court may have arrived at an erroneous conclusion" (*R.* v. *Lincolnshire Justices; ex parte Brett* [1926] 2 K.B. 192) governs the situation. The approval was referred to by Glyn-Jones, J., in *R.* v. *Paddington North, etc., Rent Tribunal;* and Goddard, L.C.J., when demonstrating that the question always came back to jurisdiction, explained that the court could act in the case of bias—as it did in *R.* v. *Grimsby Borough Quarter Sessions; ex parte Fuller* [1955] 3 W.L.R. 563; 99 SOL. J. 763—because if a recorder was prejudiced he would not be sitting as an impartial judge.

Cavilling at the Legislature is not helpful; but my own view is that practitioners would be happier not so much if there were a right of appeal, but if the appointment of members of rent tribunals were made in some such way as that of referees under the Landlord and Tenant Act, 1927 (when the relevant provisions of that statute were in force) or that of arbitrators under the Agricultural Holdings Act, 1948.

R. B.

Mr. GEOFFREY LEWIS HOWARTH has been appointed an Assistant Registrar of the Brighton County Court.

Mr. HAROLD EDWIN PIFFE-PHELPS has been appointed an Assistant Registrar of the Birmingham County Court.

HERE AND THERE

LORD RADCLIFFE

NOTHING in the world (except litigation and horse racing) is so unpredictable as judicial promotion and retirement. Towards the end of Michaelmas Term all the talk on that topic was of the impending retirement of Lord Radcliffe from the office of Lord of Appeal in Ordinary in order to assume the duties of the trusteeship of the foundation set up by the will of the late Mr. Calouste Gulbenkian. If you or I found ourselves in the situation of being invited to live in a palace in Portugal exercising the princely patronage of administering a fund of £300 million to be devoted to charitable objects, we would hardly be able to move into our dream of marble halls precipitately enough. We would become Renaissance princes overnight, for who would hesitate to become a fairy godfather on such a scale? No peer, let alone a Law Lord, has been offered such a transformation since the Lord Chancellor took wing from Palace Yard to Fairyland at the end of "Iolanthe."

> Up in the air, sky high, sky high,
> Free from appeals from Chancery.

Which one of us would not toss his coronet (if he had one) over the nearest windmill? But the New Year has dawned and at the moment of writing there is still no news of Lord Radcliffe's imminent translation. Incidentally, one of his last pronouncements, quietly incisive and ironical, in an appeal determined in December, has given the civil service something to remember him by. Since the case (*Glasgow Corporation* v. *Central Land Board*) came from Scotland and turned on indigenous Scots law it may have escaped the notice of some English lawyers. The question related to a Crown objection to the production of certain documents. Lord Radcliffe said: "The phrase 'necessary for the proper functioning of the public service' is a familiar one and I have a misgiving that it will become all too familiar in the future, if the cases to which our attention is directed . . . are symptomatic of the kind of situation which the formula is supposed to cover . . . but if it is to become accepted doctrine that this very general phrase covers everything, however commonplace, that has passed between one civil servant and another behind the departmental screen on the ground that its disclosure in a legal action would impair the freedom and candour of official reports or minutes, I do not think that it will be a matter of surprise if some future judge in Scotland finds himself obliged to disregard the Crown's objection and to hold that disclosure can do much less injury to the interest of the public than non-production of a particular document may do to that other public interest which is represented by the cause of justice. I am bound to say that I should myself have supposed Crown servants to be made of sterner stuff." (Scottish judges, you will notice, have a power which might well be conferred on their English brethren.) The profession cannot feel very happy about the possibility of losing the services of the tongue which can frame such phrases as those.

FORECASTS AND FACTS

NEVERTHELESS, well before Christmas the "over the lunch table" judgemakers were busy allotting Lord Radcliffe's shoes to such and such a dashing Lord Justice, promoting a brilliant Queen's Bench judge to the Court of Appeal and filling his place with a well-practised Welsh leader. But so far the judicial changes have taken quite a different turn. Since the war, the prevailing fashion has been to make early judicial appointments so as to secure long and vigorous service from men yet in their prime. Gerrard, J., was appointed in 1953 while he was still in his forties, and, although it was known that his health had been causing some anxiety, no one seriously anticipated that after less than three years of judicial work he would be forced to retire. His appearance certainly did not suggest it. It is a most melancholy coincidence that he should thus follow the precedent of Pritchard, J., whom he was nominated to succeed and whose career on the Bench was cut short by ill-health after only six years. Probably the shortest tenure of judicial office on record was that of Holker, L.J., who, having worn himself out as a Law Officer of the Crown, accepted a seat in the Court of Appeal in 1882 and was obliged to resign it four months later. Now, sitting in the place of Gerrard, J., in Hilary Term there will be Diplock, J., who, still young, has been called away from the very best sort of practice at the Bar. His quiet, friendly and unself-assertive personality make him one of the best liked of men. He is a keen horseman and one of the most active members of the Pegasus Club. It would be good to see him ride again in the Bar Point to Point. Long ago, in 1922, Lord Roche (then Roche, J.) set the first precedent of a judge so participating in the event. It is welcome, by the way, to see the Master of the Rolls starting the New Year as a Baron.

OLD STORY

ONE of the stock topics that journalists serve out in rotation is the fabulousness of earnings in the law, the enormous rewards within the young lawyer's grasp the minute he qualifies. There was a particularly fatuous article something on those lines in one of the Sunday papers just before Christmas. If one takes the most spectacular reports of brief fees and generalises and generalises and generalises, one can get the most spectacular results. But one couldn't deduce much that was useful about the economic condition of the average reporter from the incomes of the Press Lords or even of the leading editors. Only the inspectors of taxes could give statistics and they don't. Failing that, one can keep one's eye on the "wills and bequests" column, and it's surprising the number of solicitors whose estates are well into the five figures, though the general public still insist on regarding them as the "poor relations" of the profession. On the whole, the Bar, even the recognised leaders of the Bar, and the judges leave less. But the estates of the eagles publicly noted do not, of course, tell one much about the earnings of the smaller birds perching and nesting precariously on either branch of the profession. It is natural that the solicitors should tend to make more than the Bar since they fight the battle of survival on a far broader front and approximate more to the business man. They also incur heavier expenses for office staff and so risk more. On the other hand, partnership and the possibility of working as an employee give the less adventurous greater chances of steady security than the individualist barrister ever enjoys. The barrister is particularly unhappy in his tax situation as compared, say, with the man of business: there is so little relatively that he can charge to expenses. In these days, there are only two valid reasons for going in for the law: one that you like the life for its own sake, provided you can manage to hang on, and the other that you are convinced that you have no talent at all for anything else.

RICHARD ROE.

NOTES OF CASES

These Notes of Cases are published by arrangement with the Incorporated Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible, the appropriate page reference is given at the end of the note.

Judicial Committee of the Privy Council

AUSTRALIA: WOOL SUBSIDY SCHEME: ADMINISTRATIVE: NO CONTRACTUAL RIGHT TO SUBSIDY

Australian Woollen Mills, Ltd. *v.* Commonwealth of Australia

Viscount Simonds, Lord Oaksey, Lord Reid, Lord Keith of Avonholm, Lord Somervell of Harrow. 23rd November, 1955

Appeal from the High Court of Australia.

The respondent, the Commonwealth of Australia, which during the late war years had bought all the Australian wool clip, ceased to do so as from June, 1946, and sales by auction were then reintroduced. The price of woollen goods in Australia remained controlled, however, as it had been during the war, and since in those circumstances auction prices might be uneconomic for local manufacturers of woollen goods a scheme of subsidies was introduced, the object being to enable the manufacturers to sell in the home market at the controlled prices. The basis of the scheme appeared from some thirty-six letters, covering the period from 1946 to 1948, written on behalf of the respondent to manufacturers, of whom the appellant, Australian Woollen Mills, Ltd., was one, and which, *inter alia*, made provision for the proposed subsidy and the method of its calculation, and stated that the scheme would be vested in and under the control of the Australian Wool Realization Commission. Correspondence subsequent to June, 1948, stated, in effect, that subsidy was returnable or not claimable on stocks in hand at Christmas, 1948. The appellant company contended that the letters of 1946 to 1948 constituted a series of contracts—offers which were accepted by a purchase of wool—under which they were entitled to subsidy on all wool purchased by them between June, 1946, and June, 1948, and under that head they claimed a sum of £108,871; they also claimed a sum of £67,282 which they had been called upon to refund to the respondent on the termination of the scheme and which they had paid under protest, making a total claim of £176,153. Before the Wool Realization Commission the appellant had also claimed a sum of £92,002 in respect of unsubsidised wool bought and used between June and Christmas, 1948, but that claim had been refused by the commission on the ground that there was no authority to subsidise wool purchased after 31st July, 1948, when the scheme came to an end, and that claim formed no part of the present action. The respondent pleaded that there was no contract, that the basis of the scheme was not contractual but administrative, and that the letters contained statements of policy and not contractual offers. There was in fact no contract form signed by either party. The respondent also alleged that the £67,282 was properly repaid in accordance with the scheme. The High Court of Australia found in favour of the Commonwealth, and the company now appealed.

LORD SOMERVELL OF HARROW, giving the judgment, said that the letters of 1946 to 1948 could not be read as an offer or offers to contract. They contained a statement of policy. The "scheme" was to be administered by the commission, which was itself to determine the amount of the subsidy. No single phrase or provision might be decisive. The letters must be read as a whole. If the intention had been to provide for a series of contracts one would have expected as between these parties a form containing the provisions which, if disputes arose, would be construed and applied by the courts. The number of uncertain factors made it natural that the basis should be administrative. Accordingly, there was no contractual right to a subsidy and the appellants' claim under that head failed. With regard to the other claim, it was within the discretion of the commission in computing refund not to have regard to the usage of unsubsidised wool bought and used between June and Christmas, 1948, and the respondent was therefore entitled to demand the £67,282 without regard to that user. In the result, their lordships agreed with the decision of the High Court. The appeal would be dismissed and the appellant would pay the costs of the appeal.

APPEARANCES: *Sir Garfield Barwick*, Q.C., *J. Leaver* and *Ian Baillieu* (*Galbraith & Best*); *W. J. V. Windeyer*, Q.C., and *G. H. Lush* (*Coward, Chance & Co.*).

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law] **[1 W.L.R. 11**

REVENUE: MANUFACTURING COMPANY: PROFITS: COMPUTATION OF COST OF RAW MATERIALS: F.I.F.O. OR L.I.F.O.

Minister of National Revenue *v.* Anaconda American Brass, Ltd.

Viscount Simonds, Lord Oaksey, Lord Reid, Lord Keith of Avonholm, Lord Somervell of Harrow. 13th December, 1955

Appeal from the Supreme Court of Canada.

The respondent, Anaconda American Brass, Ltd., carried on the business of purchasing metals, manufacturing them into sheets, rods and tubes and selling the manufactured products. It was constantly purchasing metals to replace those that were being used, but did not keep records from which the actual metals used during the year could be identified or the amounts paid for those metals determined. It did keep records of the quantities of metals: (*a*) in its inventory at the beginning of the year; (*b*) purchased during the year, and (*c*) in its inventory at the end of the year. It also kept records of the prices paid for the metals purchased from time to time. The company did not know, however, and could not ascertain either in respect of all the metals which it used during the year what price had been paid for them or in respect of all the metals which it had at the end of the year what price had been paid for them. In those circumstances the company, for the purpose of determining its annual profit or gain for income tax purposes for the year 1947, in the absence of knowledge of the proper cost to be ascribed to the metals used and the proper cost or value of the metals remaining in stock, adopted a system known as L.i.f.o., or last-in-first-out, in which the cost per pound of the metal most recently purchased and added to stock was the cost per pound of metal content to be charged against the next sale of processed metal products. In 1947 there had been large increases in the price of metals, and by thus attributing the higher cost to the metals processed and the lower cost to those retained in stock the company was able to show far lower profits than if it had followed the accustomed or traditional method of return. The appellant, the Minister of National Revenue, taking the view that, however appropriate the L.i.f.o. method might be for the corporate purposes of the company, it did not truly reflect its profit for income tax purposes, adopted what was known as the F.i.f.o. or first-in-first-out method, which assumed that the metal first purchased was the metal first used, with the result that for the year 1947 he increased the amount of taxable income declared by the company by $1,611,756, with the result that its excess profits tax for that year was increased by about $241,000 and its income tax by about $483,000. An appeal by the company against that assessment was allowed by the Exchequer Court of Canada, whose decision, on further appeal, was affirmed by a majority of the Supreme Court of Canada. On this appeal to the board only the excess profits tax was in issue.

VISCOUNT SIMONDS, giving the judgment, said that the appeal raised a question of novelty and importance. The facts were not in dispute. Since the decision in *Whimster & Co.* v. *Inland Revenue Commissioners* (1925), 12 Tax Cas. 813, what was to be valued at the beginning and end of the accounting period had for tax purposes been taken to be the actual stock so far as it could be ascertained. Here there was no less than six and a half million pounds of copper in the 1947 closing inventory to which the 1936 cost was ascribed. Lord Herschell said in *Russell* v. *Town and County Bank* (1888), 13 App. Cas. 418, at p. 424: "The profit of a trade or business is the surplus by which the receipts from the trade or business exceed the expenditure necessary for the purpose of earning those receipts." That was only one of many judicial observations in which it was implicit that no assumption need be made unless the facts could not be ascertained. There was no room for theories as to flow of costs; nor was it legitimate to regard the closing inventory as an unabsorbed residue of cost rather than as a concrete stock of metals awaiting the day of process. It was, in their lordships' opinion, the failure to observe, or, perhaps, the deliberate disregard of, facts which could be ascertained and must have their proper weight ascribed to them, which vitiated the application of the L.i.f.o. method to the present case. The appeal must be

allowed, and the respondent company must pay the costs of this appeal and of the proceedings in the courts of Canada.

APPEARANCES: *C. F. H. Carson*, Q.C., *W. R. Jackett*, Q.C., *Allan Findlay*, Q.C., and *F. N. Bucher*, Q.C. (*Charles Russell and Co.*); *Diplock*, Q.C., *A. S. Pattillo*, Q.C., and *A. J. MacIntosh* (*Beaumont & Son*).

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law] **[2 W.L.R. 31**

House of Lords

ASSESSMENT OF DAMAGES FOR LOSS OF EARNINGS: DEDUCTION OF ESTIMATED TAX

British Transport Commission *v.* Gourley

Earl Jowitt, Lord Goddard, Lord Reid, Lord Radcliffe, Lord Tucker, Lord Keith of Avonholm and Lord Somervell of Harrow. 8th December, 1955

Appeal from the Court of Appeal.

A chartered civil engineer, the plaintiff in the action, was seriously and permanently injured in an accident to a railway train driven and controlled by the servants of the British Transport Commission, the defendants. He claimed damages for negligence. Pearce, J., assessed the general damages at £9,000 and the agreed special damages by way of expenses was £1,000. He assessed the damages for the respondent's loss of earnings at £37,720, rejecting the contention that the income tax and sur-tax which he would or might have had to pay if this amount had in fact been earned by him should be taken into account. On the assumption that he was wrong in this, he assessed these damages at £6,695. The Court of Appeal affirmed his decision and the appellants appealed to the House of Lords.

EARL JOWITT said that the question was whether *Billingham* v. *Hughes* [1949] 1 K.B. 643 was rightly decided. The problem was: For what damages were the defendants liable? and the answer was: For such damages as by reason of their wrongdoing the plaintiff had sustained. To ignore the tax element to-day would be out of touch with reality; it was not so remote that it should be disregarded. No sensible person regarded his net earnings as equivalent to his available income. Save for the fact that in many cases the tax became payable only after the money had been received, there was no element of uncertainty about its incidence. There was no reason why the plaintiff should not have his damages assessed on the basis of what he had really lost. In determining what he had really lost his tax liability should have been considered. It would be unfortunate if, as the result of this decision, the fixing of damages were to involve an elaborate assessment of tax liability. Such an assessment would be none the worse if it were on broad lines. In this case the figure of £6,695 should be substituted for £37,720. The appeal should be allowed.

LORD GODDARD, LORD REID, LORD RADCLIFFE, LORD TUCKER, and LORD SOMERVELL OF HARROW agreed.

LORD KEITH OF AVONHOLM dissented.

Appeal allowed.

APPEARANCES: *Sir Andrew Clark*, Q.C., *Sir Frank Soskice*, Q.C., and *Humfrey Edmunds* (*M. H. B. Gilmour*); *Paull*, Q.C., *Wacher* and *Beattie* (*Wilkinson, Howlett and Moorhouse*).

[Reported by F. COWPER, Esq., Barrister-at-Law] **[2 W.L.R. 41**

RATING EXEMPTION: SCIENTIFIC SOCIETY

Institute of Fuel *v.* Morley (Valuation Officer) and Another

Earl Jowitt, Lord Morton of Henryton, Lord Radcliffe, Lord Tucker and Lord Cohen. 12th December, 1955

Appeal from the Court of Appeal ([1955] 1 Q.B. 317; 99 SOL. J. 73).

The Institute of Fuel was incorporated in 1946 by royal charter, para. 7 setting out its purposes: "(*a*) To promote, foster and develop the general advancement of the various branches of fuel technology as an end in itself, and as a means of furthering the more scientific and economic utilisation of fuel of all kinds for industrial, commercial, public, agricultural, domestic, transport and/or other purposes, and to promote, assist, finance and support such industrial and scientific research, investigation, and experimental work in the economical treatment and application of fuel as the institute may consider likely to conduce to those ends, and to the benefit of the community at large . . . (*d*) To uphold the status of members of the institute by holding or prescribing examinations for candidates for election and by requiring standards of knowledge and experience which can be approved . . ." The institute occupied premises in London and claimed exemption from rates as being "instituted for the purposes of science . . . exclusively" within s. 1 of the Scientific Societies Act, 1843. The Court of Appeal, affirming the Lands Tribunal, rejected the claim. The institute appealed to the House of Lords.

EARL JOWITT said that he agreed with Lord Morton of Henryton.

LORD MORTON OF HENRYTON said that it was contended that, though the society was in part instituted for the purposes of science, viz., for purposes of fuel technology, which were conceded to be purposes of science within the section, it was also instituted in part for other purposes which were not purposes of science. Paragraph 7 (*a*) stated the main purpose of the institute and the part which related to industrial and scientific research in the economical treatment of fuel was only ancillary to the advancement of fuel technology. It was submitted that the sub-paragraph stated two purposes, one scientific and the other commercial, but the sub-division did not help the respondent, as both the purposes stated therein were scientific. There was not in either of them any suggestion that the institute could embark on any commercial pursuit. Both were confined to the acquisition of knowledge in the realm of fuel technology, which was admittedly a science, and to the spread of that knowledge for the benefit of the community. The respondent relied strongly on sub-paragraph (*d*), but if the institute was to pursue efficiently its scientific purposes its members must attain standards of knowledge and experience which it could approve. It was in this sense and for this purpose that the status of members was to be upheld (see *Institution of Civil Engineers* v. *Inland Revenue Commissioners* [1932] 1 K.B. 149, 162). Assuming that to be a member was of professional and pecuniary advantage, this was only incidental (see *Inland Revenue Commissioners* v. *Forrest* (1890), 15 App. Cas. 334, 354). The appeal should be allowed.

The other noble and learned lords agreed. Appeal allowed.

APPEARANCES: *Rowe*, Q.C., and *F. A. Amies* (*Philip Conway, Thomas & Co.*); *Lyell*, Q.C., and *Patrick Browne* (*Solicitor of Inland Revenue* and *Sharpe, Pritchard & Co.*).

[Reported by F. COWPER, Esq., Barrister-at-Law] **[2 W.L.R. 64**

Court of Appeal

PRACTICE NOTE

PRACTICE: DISCOVERY: INTERLOCUTORY ORDER: APPEAL: R.S.C., Ord. 31, r. 12, proviso

Edmiston *v.* British Transport Commission

Singleton and Jenkins, L.JJ. 23rd November, 1955

Appeal from Devlin, J.

The plaintiff, an employee of the British Transport Commission, suffered serious injury on 7th November, 1951, when he fell from the top of the tank of a locomotive engine while engaged on certain maintenance work. He brought an action against the commission, alleging common-law negligence. His legal advisers desired to obtain information as to any similar accidents which had occurred to other employees of the commission, and of the Railway Executive; and applied for an order to the commission to disclose "all documents relating to accidents in which persons employed by the defendants or by the Railway Executive have since 1st January, 1947, fallen from, on or about the tops of locomotives, including accident reports, accident books or records, copies or originals of statutory returns or analyses or compilations containing records of such accidents whether kept or made locally or in regions or centrally." There was already on the file an affidavit sworn by the motive power superintendent of the commission's Scottish region, setting out certain documents and deposing to the fact that there were no other relevant documents. In reply, the plaintiff's solicitor had sworn an affidavit expressing his belief that the defendant commission and the Railway Executive had in their possession

further relevant documents. The master and, on appeal, Devlin, J., refused the application, and the plaintiff appealed.

SINGLETON, L.J., said that there was already on the file when this application for an order was made an affidavit by the representative of the defendants, and that affidavit, upon the practice followed in regard to discovery, was conclusive except in certain circumstances. The note in the Annual Practice, "Upon application for further affidavit," following Ord. 31, r. 12, read: "Unless the affidavit is shown from these sources to be insufficient no further affidavit can be ordered; the opponent cannot (except under r. 19A) show by a contentious affidavit that it is insufficient." There was nothing in the plaintiff's solicitor's affidavit which enabled the court to go behind that of the defendant's representative; it referred to documents in general and did not specify any relevant document which was shown to be in the possession of the defendants. Furthermore, by the proviso to Ord. 31, r. 12, "discovery shall not be ordered when and so far as the court or judge shall be of opinion that it is not necessary either for disposing fairly of the cause or matter or for saving costs." He did not think that an order in the wide terms sought was necessary for disposing fairly of the cause or matter, and certainly it would not save costs. The appeal must fail. Appeal dismissed.

APPEARANCES: *Rose Heilbron*, Q.C., and *J. F. Platts-Mills* (*W. H. Thompson*); *N. R. Fox-Andrews*, Q.C., and *S. Chapman*, Q.C. (*M. H. B. Gilmour*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [2 W.L.R. 21

ESTOPPEL: ROYALTIES PAID UNDER AGREEMENT FOR USE OF INVENTIONS: ESTOPPEL FROM DENYING LIABILITY TO PAY

Lyle-Meller *v.* A. Lewis & Co. (Westminster), Ltd.

Denning, Hodson and Morris, L.JJ. 29th November, 1955

Appeal from Lloyd-Jacob, J. (72 R.P.C. 307).

On 24th December, 1952, an agreement was entered into between the plaintiff, who had lodged at the Patent Office three applications for letters patent and certain foreign applications in connection with gas-filled lighters and refills, and the defendants, who were then manufacturing and selling such goods. The agreement provided, *inter alia*, (*a*) that the plaintiff should himself discontinue the selling of lighters; (*b*) that when the patents should be granted, the plaintiff should grant to the defendants sole and exclusive licences under such patents (with power to grant sub-licences) for the full term thereof; (*c*) that pending the grant of such licences the defendants should be entitled to use and exercise the plaintiff's inventions as if licences under the patents had in fact been granted; (*d*) that during the continuance of the agreement the plaintiff should not himself use or exercise his inventions; (*e*) that during the continuance of the agreement the defendants should pay to the plaintiff specified royalties on goods sold which embodied the inventions or any of them so long as the inventions embodied should be protected by valid letters patent in the United Kingdom; (*f*) that the defendants should periodically render accounts and pay royalties to the plaintiff, and (*g*) that if the royalties should not amount to £2,000 in any one year (and in certain other events) the plaintiff could terminate the licences. In accordance with the agreement, the plaintiff discontinued the sale of lighters and refills, and from time to time the defendants rendered accounts and paid what were called "royalties" in respect of sales made by them. The plaintiff's complete specifications were accepted and published, but no patents had ever been granted. In December, 1954, the defendants sent a statement to the plaintiff showing that the sum of £7,123 was due for royalties, but shortly afterwards repudiated this liability, and asserted that no royalties were or ever had been payable, as under the agreement royalties were not payable until British letters patent were granted; and as their lighters and refills did not, on the true construction of the complete specifications as published, embody the plaintiff's inventions. In an action brought to recover the £7,123 stated to be due, Lloyd-Jacob, J., gave judgment for the plaintiff. The defendants appealed.

DENNING, L.J., said that in their submissions on the construction of the agreement, the defendants had picked on one phrase and said that no royalties were payable until letters patent were granted. Such a contention flouted nearly every other clause, and was in flagrant defiance of the whole tenor of the agreement. Secondly, they said that their lighters and refills did not embody the plaintiff's inventions; to which the plaintiff replied that their conduct had estopped them from putting forward such a contention. The judge had held that it was far too late for the defendants to take such a point, seeing that for two years they had paid royalties and accounted on the basis that their goods embodied the inventions, so that the plaintiff had taken no steps to determine the agreement and exploit his inventions elsewhere. The defendants argued that there could not be an estoppel, as their representations involved matters of law as to the construction of the agreement and of the plaintiff's patent specifications. But the conduct of the defendants amounted to a clear representation that their goods embodied the plaintiff's inventions and that they were liable to pay royalties. Such a representation was binding, whether regarded as a representation of law or of facts or as a mixture of both, and no matter whether it concerned the present or the future. It might not give rise to an estoppel at common law, strictly so called; but we had got far beyond the old common-law estoppel now; we had reached a new estoppel which affected legal relations. Such an estoppel applied to representations as to the future, as in *Central London Property Trust* v. *High Trees House, Ltd.* [1947] K.B. 130; and also to representations about legal relations, as in *Robertson* v. *Minister of Pensions* [1949] 1 K.B. 227. The defendants could not now go back on their assurances, and the appeal should be dismissed.

HODSON, L.J., said that the estoppel set up was of the kind well recognised at common law. The representations were representations of fact, namely, that the defendant's articles embodied the inventions which covered the subject-matter of the agreement. It mattered not that questions of law might be involved and that it might be necessary to construe the agreement or to inquire into matters of patent law to see whether there was an invention covered by a patent.

MORRIS, L.J., agreed that the appeal should be dismissed. Appeal dismissed.

APPEARANCES: *Sir Lionel Heald*, Q.C., and *G. T. Aldous* (*Lewis & Lewis and Gisborne & Co.*); *Viscount Hailsham*, Q.C., and *P. Stuart Bevan* (*Herbert Baron & Co.*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [1 W.L.R. 29

SETTLEMENT: COMPROMISE: JURISDICTION TO SANCTION

***In re* Powell-Cotton's Resettlement**

Evershed, M.R., and Birkett, L.J. 5th December, 1955

Appeal from Danckwerts, J.

Under a resettlement certain freehold properties and capital moneys were settled on the first defendant for life, with remainder to his issue, with remainders over. The resettlement contained a lengthy investment clause of a complicated character and doubts had arisen as to its scope. The trustees of the settlement applied by summons to have the effect of the investment clause decided. The defendants to the summons were the tenant for life and four infants who had contingent reversionary interests in the settled property. Immediately after the issue of the summons, the parties applied for leave to compromise the proceedings upon the terms that a new and modern investment clause be substituted for the old investment clause. Danckwerts, J., refused to sanction the proposed compromise on the ground that the jurisdiction of the Chancery Division did not extend to sanctioning a transaction of this character and, in any event, the transaction was not one which the court ought to sanction.

EVERSHED, M.R., said that he based his conclusion, in rejecting the appeal, on the ground that, if it could be said that there was a question being compromised, nevertheless he would feel unjustified in interfering with the view which the judge took in his discretion that to substitute an entirely new modern investment clause for that which was found in the settlement was not the right way of treating the matter. As to the matter of jurisdiction, it was contended that the word "compromise" covered any resolution not merely of a dispute or actual controversy, but also of any question of doubt or difficulty. Without expressing any final conclusion on the point, he, his lordship, was not satisfied that the court could, in view of the principles laid down in *Chapman* v. *Chapman* [1954] A.C. 429, 445, 457, accept the wide significance which counsel would assign to the word. It might be that powers which were expressed with uncertainty might give rise to questions of dispute as to

rights. But in the present case the judge rightly thought that the simple question, or the compromise of that question sought to be achieved, was really "dressed up" in the sense that in truth the advisers of the persons concerned had sought, by fostering an ambiguity in a power of investment, to say that that gave them the opportunity of substituting an entirely new investment clause. The appeal should be dismissed.

BIRKETT, L.J., agreed. Appeal dismissed.

APPEARANCES: *G. A. Rink, P. W. E. Taylor* and *Michael Browne* (*A. F. & R. W. Tweedie*).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] [1 W.L.R. 23

Chancery Division

TRADE MARK: REGISTRATION: MERCHANDISE MARKS ACT: FORGERY OF TRADE MARK

***In re* Vitamins, Ltd.'s Application**

Lloyd-Jacob, J. 24th November, 1955

Motion.

Application for the registration of the trade mark "Pabalate" in respect of pharmaceutical substances was made by the present opponents, an American company, on 24th January, 1952. That application was opposed by the present applicants, and on 26th November, 1952, the application was withdrawn. On 9th December, 1952, the applicants applied for registration of the mark "Pabalate" in respect of pharmaceutical substances, and their application was opposed by the opponents, who contended that registration should not be allowed on the ground that it would be contrary to s. 11 of the Trade Marks Act, 1938 having regard to their wide user of the mark in the United States and Canada and the extensive advertising in medical journals and trade papers in connection with that use, some of which had reached this country. The registrar allowed the application and the opponents appealed to the court. At the hearing of the appeal the further question was argued whether the registration would be disentitled to protection in a court of justice under s. 11, because it would offend s. 2 of the Merchandise Marks Act, 1887, under which a person is penalised who "forges any trade mark . . . unless he proves that he acted without intent to defraud."

LLOYD-JACOB, J., said that an initial matter was with regard to the possible defence under this section embraced by the words "unless he proves that he acted without intent to defraud." It had been laid down in a long line of decisions that the intention to defraud referred to in s. 2 had to be found in the deliberate commission of the act which comprised the forging of the trade mark. If any support for that proposition were required, it would be found in the recent decision of *Slatcher* v. *Mence Smith* (*George*), *Ltd.* [1951] 2 K.B. 631. For the purpose of establishing that a trade mark has been forged it was necessary that the prosecution should establish that no assent by the proprietor had been forthcoming and that the act committed had been the association of the mark in question by the accused on or in relation to goods in respect of which the word or device has been associated in relation to trade as a trade mark. The definition of "trade mark" in s. 3 of the Act extended initially to trade marks entered on the register, and notionally added to them trade marks which according to the priority given to them by s. 103 of the Patents, Designs, and Trade Marks Act, 1883 (now s. 91 of the Patents and Designs Act, 1907, as amended), could be entered upon the register in consequence. If, therefore, a foreign applicant failed to avail himself of the priority provisions by allowing the period to elapse from the date of his acquisition of a right in his own country, then his mark was not within the expression "trade mark . . . protected by law" in this definition. In the present case there was no material which enabled him to come to the conclusion that at the date of the present application the priority period of six months in which the opponents could apply under the Convention provisions had not expired and accordingly, on the construction which he gave to s. 3 of the Merchandise Marks Act, there was no justification for the submission that by reason of the opponents' registration abroad the applicants' use of this mark would be disentitled to protection in a court of justice. Accordingly, the objection to registration based on the Merchandise Marks Act had no substance and could not prevail. There were two matters which also ought to be considered. The first was the propriety or otherwise of the applicants in making this application for registration. By the rules it was provided that in applications for a mark which had not yet been used in the trade, the applicant should assert that he proposed to use the mark and that he claimed to be the proprietor of the mark. In his judgment something more had to be established than a mere desire to secrue registration of a mark which it was thought would be of advantage in one's business. There was a second factor which was that the evidence disclosed that the mark had been used by the opponents on and in relation to a remedy for arthritic conditions in human beings. The present application was made in respect of pharmaceutical substances which indicated that a similar field was contemplated in the applicants' user. The evidence disclosed a genuine business on the part of the opponents in their own country, and that their advertisements in respect of that business might reach this country. He was bound to envisage that, with the passage of time, some conflict might occur in the minds of the trade between the use of the mark by the applicants and the advertisement and user of the mark overseas by the opponents. He was not satisfied that the public interest would best be served by permitting the present application for registration. Accordingly, on both those grounds he would hold that the application should not be permitted to proceed. Appeal allowed.

APPEARANCES: *G. D. Everington* (*Faithfull, Owen & Fraser*); *R. G. Lloyd* and *F. G. Guttmann* (*W. B. Blackwell & Co.*); *P. J. Stuart Bevan* (*Solicitor, Board of Trade*).

[Reported by Mrs. IRENE G. R. MOSES, Barrister-at-Law] [1 W.L.R. 1

SETTLED LAND SUBJECT TO TRUST FOR SALE: PROPOSAL TO VARY TRUSTS IN INTERESTS OF BENEFICIARIES: JURISDICTION: POWERS OF TRUSTEES FOR SALE

***In re* Simmons; Simmons *v.* Public Trustee**

Danckwerts, J. 30th November, 1955

Adjourned summons.

The Law of Property Act, 1925, provides by s. 28: "(1) Trustees for sale shall, in relation to land or to manorial incidents and to the proceeds of sale, have all the powers of a tenant for life and the trustees of a settlement under the Settled Land Act, 1925 . . ." The Settled Land Act, 1925, provides by s. 64: "(1) Any transaction affecting or concerning the settled land, or any part thereof, or any other land (not being a transaction otherwise authorised by this Act, or by the settlement) which in the opinion of the court would be for the benefit of the settled land, or any part thereof, or the persons interested under the settlement, may, under an order of the court, be effected by a tenant for life, if it is one which could have been validly effected by an absolute owner. (2) In this section 'transaction' includes any sale, extinguishment of manorial incidents, exchange, assurance, grant, lease, surrender, reconveyance, release, reservation or other disposition, and any purchase or other acquisition and any covenant, contract, or option, and any application of capital money (except as hereinafter mentioned), and any compromise or other dealing, or arrangement . . ." A settlor, by a deed of settlement dated in 1923, and made for the benefit of herself and other beneficiaries, directed the trustees to hold her share in certain real and personal property on trust for sale. She further directed that the income of her share of the trust fund arising therefrom should be paid to her during her lifetime and that, after her death, the trustees should hold her share and the income thereof in such manner as she should by will or codicil appoint. In 1955 the settlor wished to increase her capital and, as she was advised that this could not be done under the terms of the settlement, she took out a summons asking that the trustees might, having regard to the statutory jurisdiction, be authorised and directed to give effect to a proposal regarding the real property which would carry out her wishes.

DANCKWERTS, J., said that the settlor, who had a protected life interest coupled with certain powers of appointment, proposed that she should receive a sum of capital for her absolute benefit, compensation being given to another person interested. The first question was whether the power to enter into transactions under the authority of the court pursuant to s. 64 of the Settled

Land Act was one of the powers conferred on trustees for sale by s. 28 (1) of the Law of Property Act. When the latter section said "all," one would suppose that it meant what it said, and any doubt in the matter was settled by *In re Wellsted* [1949] Ch. 296; it was plain that a proceeding under s. 64 was one of the powers conferred by s. 28. The second question was whether the present proposals were within the authority of the court under s. 64. It was plain from *In re Downshire Settled Estates* [1953] Ch. 218 that the powers conferred by s. 64 were wider than those under s. 57 of the Trustee Act, 1925; the present proposal was for the benefit of persons interested and was a "transaction" within the terms of subs. (2), and was one which the court had jurisdiction to authorise. On the merits the proposals were proper, and would be authorised accordingly. Declaration accordingly.

APPEARANCES: *R. Jennings*, Q.C., and *T. L. Dewhurst*; *E. I. Goulding*; *J. Willcock* (*Theodore, Goddard & Co.*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [2 W.L.R. 16

CHARITY: DIRECTIONS OF WILL OF 1786 DISREGARDED AS IMPOSSIBLE: CY-PRÈS SCHEME OR GIFT OVER

***In re* Hanbey's Will Trusts; Cutlers' Company *v.* President and Governors of Christ's Hospital, London**

Danckwerts, J. 2nd December, 1955

Adjourned summons.

The testator, who died on 25th December, 1786, by his will, dated 12th January, 1782, bequeathed the sum of £8,000 to the Cutlers' Company [of Sheffield] upon trust to apply the annual income thereof in perpetuity for divers charitable purposes set out with great particularity (including the provision of coats and hats of a specified type for poor people, and the education of certain "blue coat" boys), with a gift over in favour of Christ's Hospital in the event of the company at any time failing to distribute the income of the trust fund in the manner and according to the directions prescribed by the will. Since the year 1917 the company had found itself no longer able to comply strictly with the terms of the bequest in respect of the mode of the annual distribution of the fund. In 1955 the company issued a summons to determine, *inter alia*, the question whether the gift over had or had not taken effect, and the court treated the summons as though it were amended to include a request for a settlement of a scheme to preserve the original trusts in an amended form.

DANCKWERTS, J., said that in view of the long established breaches of trust, *prima facie* the gift over would have taken effect, and Christ's Hospital so claimed, while the trustees contended that the court should direct a scheme which would have the effect of preserving the original charities. There were doubts both as to whether the court had power to direct a scheme so as to defeat a gift over, and as to whether, if such a power existed, it should be exercised in the present case. The authorities were not clear; in *In re Richardson's Will* (1887), 58 L.T. 45, and other cases, schemes were made which had the effect of preserving an original trust which had been neglected by the trustees, thus defeating a charitable gift over; while in *Christ's Hospital* v. *Grainger* (1849), 1 Mac. & G. 460, the result was that the gift over came into effect. It was practically impossible to discover what was the dividing line. Dealing with the questions now raised, it seemed, first, that the court had power to direct a scheme, and, secondly, that such a direction would defeat the gift over; thirdly, the court was not bound to direct a scheme, but must have a discretion in the matter. The last question was whether a scheme should be directed. There were several reasons why no such direction should be given in the present case. Unless a scheme was directed the trust fund had vested in Christ's Hospital some time before; to defeat the forfeiture clause would seem to be defeating the intention of the testator, and it was difficult to see what scheme could be directed which would apply the property *cy-près* with the testator's objects. Christ's Hospital were, accordingly, entitled to the trust fund. Declaration accordingly.

APPEARANCES: *T. A. C. Burgess* (*Peacock & Goddard*, for *Younge, Wilson & Co.*, Sheffield); *N. S. Warren* (*Beachcroft & Co.*); *B. J. H. Clauson* (*D. Buckley* with him) (*Treasury Solicitor*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [2 W.L.R. 23

Queen's Bench Division

LANDLORD AND TENANT: COVENANT TO REPAIR BY LANDLORD: NECESSITY FOR NOTICE OF WANT OF REPAIR

Uniproducts (Manchester), Ltd. *v.* Rose Furnishers, Ltd.

Glyn-Jones, J. 30th November, 1955

Action tried at Manchester Assizes.

A lessor covenanted to keep in good tenantable repair the roof, main structure and outside walls of a shop leased to the plaintiffs in February, 1953, for a term of five years. In June, 1953, the plaintiffs themselves carried out limited repairs to make safe the floorboards of a store room on the ground floor at the request of the local authority. On 10th November, 1953, while the shop manager was standing on this floor it gave way and he was precipitated therefrom into the basement whereby he sustained serious injuries for which he was compensated by the plaintiffs. No notice of want of repair had been given to the lessors. In an action by the plaintiffs for breach of covenant they claimed an indemnity from the lessor to cover the compensation and the costs which they had paid to the shop manager. There was evidence that the flooring had long been suffering from dry rot.

GLYN-JONES, J., said that the plaintiffs claimed that there had been a breach of covenant because the floor was out of repair. The defendants contended that ever since *Makin* v. *Watkinson* (1870), L.R. 6 Ex. 25, there was an implied condition in such a covenant that the lessor should have notice of the want of repair before he could be called on to make it good. The reason for this implied condition, as stated in *Murphy* v. *Hurly* [1922] 1 A.C. 369, was that as the landlord was out of possession and the tenant in possession, it would be unreasonable and unrealistic to hold the landlord liable for not having effected repairs if he did not and could not know that the repairs needed doing. Against that the plaintiffs contended that when the landlord was in a perfectly good position to know what the state of the premises was at the time of the letting there was no necessity for an implied term that notice should be given. It was, of course, well settled that a landlord could not escape liability to repair by showing that the defect existed at the time of the letting, but that did not mean that the obligation to put into repair rested on the landlord at the moment when the lease began to run, whether or not he had knowledge or notice of the defect. Whether or not the defect existed at the beginning of the tenancy, the obligation to repair did not arise until the landlord had notice. It was conceded that there was no express notice, and the plaintiffs had failed to prove that the defendants had actual knowledge of the defect. The action, therefore, failed. Judgment for the defendants.

APPEARANCES: *F. Atkinson*, Q.C., and *W. H. Hodgson* (*James Chapman & Co.*, Manchester); *N. J. Laski*, Q.C., and *Zigmond* (*Laurence Marks*, Manchester).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [1 W.L.R. 45

Probate, Divorce and Admiralty Division

HUSBAND AND WIFE: JUSTICES: REVOCATION OF ORDER: ADULTERY: CONDONATION BY HUSBAND

Marczuk *v.* Marczuk

Lord Merriman, P., and Barnard, J. 16th November, 1955

Appeal from justices.

A wife left her husband and, in September, 1954, obtained a justices' order. Between November, 1954, and March, 1955, the wife visited the husband, more or less regularly, to obtain payments under the order; and on many such occasions sexual intercourse took place, the wife thereafter returning to her own home. On 8th May, 1955, after the husband had observed certain conduct of the wife from which the court subsequently inferred that she had committed adultery, the wife visited the husband and sexual intercourse took place. In June, 1955, the justices revoked the wife's order on the ground of her adultery on 8th May, 1955. From this order the wife appealed. (*Cur. adv. vult.*)

LORD MERRIMAN, P., reading the judgment of the court, said that the act of sexual intercourse of 8th May, 1955, was conclusive as to the husband's condonation of the wife's adultery. Although

the words of the proviso to s. 6 of the Summary Jurisdiction (Married Women) Act, 1895, could not legitimately be imported into the provisions of s. 7 of that Act, under which the wife's order had been revoked, nevertheless by common law, by ecclesiastical law and by statute law relating to matrimonial causes, a husband was barred from reliance upon adultery which he had condoned. The words " an act of adultery," in s. 7 of the Act of 1895, which was part of a code which had been said, however loosely, to be the statutory equivalent of the common-law right of a wife to pledge her husband's credit for necessaries, must, therefore, be qualified as meaning an act of adultery upon which the husband was entitled to rely and he could not rely on adultery which had been condoned. Since the husband had condoned the adultery upon which he had relied, the order could not be discharged. The wife's appeal must be allowed. The court found on the evidence that the fact that sexual intercourse had taken place between the parties more or less regularly over a period of five months, which was substantially the only evidence of resumption of cohabitation, was not sufficiently compelling to justify the inference that the wife had intended to resume cohabitation. Appeal allowed. Leave to appeal.

APPEARANCES: *G. R. King Anningson* (*Evelyn Jones & Co.*, for *Gowman, Easterbrook & Co.*, Paignton); *Philip Goodenday* and *David Sullivan* (*Lucien A. Isaacs & Maxwell Simon*, for *Arthur Goldberg*, Plymouth).

[Reported by JOHN B. GARDNER, Esq., Barrister-at-Law] **[2 W.L.R 1**

IN WESTMINSTER AND WHITEHALL

PARLIAMENT

Parliament reassembles on 24th January after the Christmas Recess

STATUTORY INSTRUMENTS

Cinematograph (Children) (No. 2) Regulations, 1955. (S.I. 1955 No. 1909.)

Cinematograph (Children) (Scotland) (No. 2) Regulations, 1955. (S.I. 1955 No. 1912 (S. 147).)

County Court Districts (Miscellaneous) No. 2 Order, 1955. (S.I. 1955 No. 1916.)

This order, which came into force on 2nd January, 1956, transfers the parish of Cleckheaton from the district of the Bradford County Court to that of the Dewsbury County Court, and adds the parish of Kingshurst to the Birmingham County Court district.

County of Dumfries (River Annan) Water Order, 1955. (S.I. 1955 No. 1911 (S. 146).) 5d.

Dressmaking and Women's Light Clothing Wages Council (England and Wales) Wages Regulation (Amendment) Order, 1955. (S.I. 1955 No. 1938.) 5d.

Export of Goods (Control) (Amendment No. 2) Order, 1955. (S.I. 1955 No. 1920.) 5d.

Food and Drugs Amendment Act, 1954 (Appointed Day) Order, 1955. (S.I. 1955 No. 1898 (C. 18).)

This order appointed 1st January, 1956, for the coming into force of the 1954 Act. Under s. 137 of the consolidating Food and Drugs Act, 1955, the latter Act came into force on the same day and immediately following the 1954 Act, which it replaces.

Food Hygiene Regulations, 1955. (S.I. 1955 No. 1906.) 8d.

Food Standards (Butter and Margarine) Regulations, 1955. (S.I. 1955 No. 1899.)

Hat, Cap and Millinery Wages Council (England and Wales) Wages Regulation (Amendment) Order, 1955. (S.I. 1955 No. 1969.) 5d.

Import Duties (Drawback) (No. 10) Order, 1955. (S.I. 1955 No. 1922.)

Labelling of Food (Amendment) Regulations, 1955. (S.I. 1955 No. 1900.) 5d.

Legal Aid (Various Courts) Regulations, 1955. (S.I. 1955 No. 1904.)

These Regulations, which came into force on 1st January, 1956, apply paras. 1 to 4 of Sched. III to the Legal Aid and Advice Act, 1949, to proceedings in the Mayor's and City of London Court, the Chancery Court of the County Palatine of Durham, the Liverpool Court of Passage, the Salford Hundred Court of Record, the Tolzey Court of Bristol, and the Norwich Guildhall Court. The effect is to provide for the remuneration of barristers and solicitors giving legal aid in proceedings in these courts at the rate applicable for equivalent proceedings in the High Court or county court.

London Traffic (Prescribed Routes) (Fulham) Regulations, 1955. (S.I. 1955 No. 1926.)

London Traffic (Prohibition of Waiting) (Redhill, Surrey) Regulations, 1955. (S.I. 1955 No. 1895.)

Mineral Oil in Food (Amendment) Regulations, 1955. (S.I. 1955 No. 1901.)

National Assistance (Determination of Need) Amendment Regulations, 1955. (S.I. 1955 No. 1905.)

National Health Service (General Dental Services) Amendment (No. 2) Regulations, 1955. (S.I. 1955 No. 1890.) 6d.

New Sarum (Amendment of Local Enactment) Order, 1955. (S.I. 1955 No. 1889.) 8d.

Open-Cast Coal (Highway) Orders (Revocation) (No. 2) Order, 1955. (S.I. 1955 No. 1902.)

Petty Sessional Divisions (Lincoln, Parts of Kesteven) Order, 1955. (S.I. 1955 No. 1915.) 5d.

Petty Sessional Divisions (London) Order, 1955. (S.I. 1955 No. 1914.) 5d.

Police (No. 2) Regulations, 1955. (S.I. 1955 No. 1913.) 5d.

Safeguarding of Industries (List of Dutiable Goods) (Amendment No. 9) Order, 1955. (S.I. 1955 No. 1897.)

Stopping up of Highways (Cheshire) (No. 7) Order, 1955. (S.I. 1955 No. 1929.)

Stopping up of Highways (Cumberland) (No. 1) Order, 1955. (S.I. 1955 No. 1930.)

Stopping up of Highways (East Sussex) (No. 8) Order, 1955. (S.I. 1955 No. 1934.)

Stopping up of Highways (East Sussex) (No. 9) Order, 1955. (S.I. 1955 No. 1896.)

Stopping up of Highways (Ministry of Supply) (Revocations) Order, 1955. (S.I. 1955 No. 1903.) 5d.

Stopping up of Highways (Northamptonshire) (No. 1) Order, 1955. (S.I. 1955 No. 1931.)

Stopping up of Highways (Plymouth) (No. 9) Order, 1955. (S.I. 1955 No. 1925.)

Stopping up of Highways (Surrey) (No. 4) Order, 1955. (S.I. 1955 No. 1932.)

Stopping up of Highways (Wiltshire) (No. 5) Order, 1955. (S.I. 1955 No. 1933.)

Training of Teachers Grant Regulations, 1955. (S.I. 1955 No. 1907.) 8d.

White Fish Subsidy (United Kingdom) No. 2 Scheme, 1955. (S.I. 1955 No. 1937.) 6d.

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 21 Red Lion Street, W.C.1. The price in each case, unless otherwise stated, is 4d., post free.]

The following lectures on current legal problems will be given under the auspices of University College, London, Faculty of Laws, from 5 to 6 p.m. at the Eugenics Theatre, Gower Street, London, W.C.1: 19th January: The Constitutional Future of Malta, by Professor R. C. Fitzgerald, LL.B., F.R.S.A.; 26th January: Sport and Recreation as Objects of Charity, by O. R. Marshall, M.A., Ph.D.; 2nd February: Reform of the Sale of Goods Act, by E. R. H. Ivamy, Ph.D.; 9th February: Freedom of the Press in the Commonwealth, by D. C. Holland, M.A.; 16th February: The Control of Monopolies, by Mrs. Valentine Korah, LL.M.; 23rd February: The Province of the Doctrine of International Law, by G. Schwarzenberger, Ph.D., Dr.Jur. Admission to the above lectures will be free without ticket. Arrangements have been made for the publication of the lectures, further information of which may be obtained from the College.

NEW YEAR LEGAL HONOURS

BARON

Sir (Francis) Raymond Evershed, Master of the Rolls. Called by Lincoln's Inn, 1923, and took silk 1933.

BARONETS

Sir Hubert Stanley Houldsworth, Q.C., Chairman of the National Coal Board. Called by Lincoln's Inn, 1926, and took silk 1943.

Colonel Charles Edward Ponsonby, Chairman of the Royal Empire Society. Admitted 1904.

COMPANION OF HONOUR

Viscount Edgar Algernon Robert Cecil of Chelwood, Q.C. Called by the Inner Temple, 1887, and took silk 1899.

KNIGHTS BACHELOR

Major Reginald Bullin, Chairman of the Portsmouth Local Employment Committee and Disablement Advisory Committee, Vice-Chairman of the Magistrates Association. Admitted 1901.

John Edward Dostin Carberry, Esq., Chief Justice, Jamaica. Called by the Middle Temple, 1925.

Joseph Henri Maxime de Comarmond, Esq., Chief Justice of the High Courts of Lagos and the Southern Cameroons.

Ragnar Hyne, Esq., Chief Justice, Fiji. Barrister-at-Law, Queensland, 1924, and called by Gray's Inn, 1950.

His Honour Judge Edgar Thorniley Dale, County Court Judge. Called by the Middle Temple, 1909.

Hersch Lauterpacht, Esq., Q.C., lately Whewell Professor of International Law, University of Cambridge. Called by Gray's Inn, 1936, and took silk 1949.

The Honourable George Coutts Ligertwood, a Judge of the Supreme Court, State of South Australia.

George North, Esq., Registrar General. Called by Lincoln's Inn.

Arthur Reginald Astley Weston, Esq., Legal Adviser and Solicitor to the Ministry of Agriculture, Fisheries and Food. Admitted 1919.

ORDER OF ST. MICHAEL AND ST. GEORGE

K.C.M.G.

The Honourable Sir Charles John Lowe, Senior Judge of the Supreme Court, State of Victoria. Barrister of the Supreme Court, Victoria, 1906.

The Honourable Thomas Clifton Webb, Q.C., High Commissioner in the United Kingdom for Her Majesty's Government in New Zealand.

C.M.G.

Arthur John Grattan-Bellew, Esq., Q.C., Attorney-General and Member for Legal Affairs, Tanganyika. Called by Lincoln's Inn, 1925, and took silk (Tanganyika) 1952.

ORDER OF THE BRITISH EMPIRE

G.B.E.

William John Sullivan, Esq., C.M.G., C.B.E., Her Majesty's Ambassador Extraordinary and Plenipotentiary in Mexico City. Called by the Inner Temple, 1921.

C.B.E.

Ralph James Bushnan Anderson, Esq., Assistant Solicitor, Office of H.M. Procurator-General and Treasury Solicitor. Called by the Middle Temple, 1926.

Alderman Herbert Neville Bewley, J.P., Chairman of the Housing Committee, Liverpool City Council. Admitted 1925.

Frederick Malcolm Boland, Esq., lately Fuisne Judge, British Guiana. Called by the Middle Temple, 1913, admitted to practice at Trinidad Bar, 1913.

Henry Montagu Burrows, Esq., Principal Clerk of Public Bills, House of Lords.

Charles Montague Cahn, Esq., Assistant Judge Advocate-General. Called by the Inner Temple, 1924.

Edward Hughes, Esq., Senior Chief Clerk, Metropolitan Magistrates' Courts Service.

William Myddelton Jones, Esq., lately Official Solicitor to the Church Commissioners. Admitted 1921.

Basil Edward Nield, Esq., M.B.E., Q.C., M.P. Called by the Inner Temple, 1925.

Thomas Dowker Shepherd, Esq. Admitted 1905.

O.B.E.

Randolph John Blair, Esq., First Secretary (Legal Division) at Her Majesty's Embassy in Vienna.

REVIEWS

The Essentials of Forensic Medicine. By Cyril John Polson, M.D. (Birm.), F.R.C.P. (Lond.), of the Inner Temple, Barrister-at-Law, Professor of Forensic Medicine, University of Leeds. 1955. London: English Universities Press, Ltd. £1 10s. net.

While primarily devised for the use of medical students, here is a book of inestimable value to the legal profession. Its author is a well-known authority on forensic medicine. His joint authorship of "The Disposal of the Dead" brought him recently to the notice of such lesser breeds outside medicine as registrars of deaths, coroners and morticians, who were sadly in need of an authoritative guide on this, to the world at large, rather unusual subject.

From the point of view of not only coroners and members of the legal professions occupied with criminal cases, but of the general legal practitioner—for much of the subject-matter is of more than specialist interest—"The Essentials of Forensic Medicine" is not merely of occasional use for reference purposes. It should have a permanent place in every library, for it is as readable as, and not more morbid than, many a popular "thriller."

Toxicology is hardly mentioned, for it is to be the subject of a companion volume. This is in accordance with the wishes of the Medical Curriculum Committee of the British Medical Association, who recommended that toxicology should be taught from a clinical point of view and that the tendency to make forensic medicine and toxicology a watertight compartment was undesirable.

Chapter VII on electrical injuries should be of particular interest to ambulance men and police officers as well as to medical practitioners and coroners.

Chapter XII distinguishes between asphyxia, which implies mechanical interference with breathing, and anoxia, which indicates a lack of oxygen in the blood due to causes other than hanging, strangulation, drowning and the like; to give examples—coal gas and anæsthetic poisoning. This and the following four chapters ought to be most enlightening to the embryonic criminologist, in particular the references to the Burke and Hare case and to that of George Joseph Smith (Brides in the Bath).

The six and a half pages devoted to anæsthetic deaths are of the utmost importance to coroners, as well as to hospital authorities and the anæsthetists themselves.

From p. 458 to the end of the book (of 539 pp. excluding a very carefully prepared index) the subjects dealt with are The Medical Acts, The General Medical Council, The Privileges of a Registered Medical Practitioner, The Law Courts and Legal Procedure, The

Medical Witness, Privileged Occasions, Consent to Medical Examination and Treatment, and Malpraxis. If all these come up to the standard of The Law Courts and Legal Procedure, which they no doubt do, one foresees that "The Essentials of Forensic Medicine" will appeal to a very much wider public than one would expect from its title.

Industrial Law. By J. L. GAYLER, B.Com., LL.B., Barrister-at-Law. 1955. London: English Universities Press, Ltd. £1 10s. net.

This book has been written with an eye to the syllabuses of various examining bodies, e.g., the British Institute of Management. Part I deals with the common law. Part II covers the law of trade unions and collective bargaining. Part III outlines the provisions of the Factories and Shops Acts. Part IV describes the law relating to wages and the Truck Acts. Part V is entitled "The Mobility of Labour." Part VI deals with the law of social insurance, unemployment and sickness benefit.

The learned author's style is attractive and the text is clearly printed upon paper of excellent quality. This book will be an invaluable aid not only to students but also to trade union leaders, managers and welfare officers.

Evidence and Procedure in Magistrates' Courts. Second Edition. By WILLIAM SHAW, M.A., formerly Clerk to the Justices for the City of Manchester. 1955. London: Butterworth and Co. (Publishers), Ltd. 10s. 6d. net.

This is a book of 106 pages dealing briefly with Admissibility of Evidence, Secondary Evidence, the Burden of Proof and Presumptions, Witnesses, Corroboration, Depositions and Procedure in Magistrates' Courts. It is intended as a guide to a lay magistrate, and it admirably fulfils this purpose. It can also be recommended as a clear and succinct account of the subjects mentioned which will be of great value to an articled clerk in his preliminary studies of magisterial work and evidence and to young assistants in magistrates' clerks' offices.

The Road to Justice. By The Right Honourable SIR ALFRED DENNING. 1955. London: Stevens and Sons, Ltd. 10s. 6d. net.

The latest volume in these interesting collections of lectures by Lord Justice Denning comprises addresses he has given in the last two years to universities in South Africa and to Bar Associations in Canada and the United States. In them he sets out "to indicate the principles which must be observed in any country if justice is to be done therein;" and very aptly, with an expression of faith in the continuance of English legal traditions, addresses the book itself to those about to enter the profession.

We think this "dedication" too restricted. The style is simple and direct, technicalities are absent and references fully explained. It is true that new entrants will find stimulating guidance on the proper approach to their work. But we also tried it out on a layman by lending him the review copy. To this step we were provoked by the customary jibes about lawyers and self-interest, and we must say that the effect when our baiter had read the book was remarkable. Sir Alfred, one of the law's most constructive critics from within, never lets the profession down but (more important) he never turns a blind eye to the flaws he finds in a system we still call justice.

This is not to say that some details are not overstated. The legal aid system, for example, is not, in the experience of many, as yet so effective a panacea as a casual reader of this book might conclude. But the precept of eternal vigilance in the cause of true justice with which the author leaves his new-entrant readers, having amply cited chapter and verse, is a salutary corrective to the impression of arbitrariness which must pervade one who has just studied the law as an examination subject. It will do no harm, either, as a maxim for the most case-hardened practitioner.

"Taxation" Manual. Eighth Edition. Compiled under the direction of RONALD STAPLES. 1955. London: Taxation Publishing Company, Ltd. £1 5s. net.

This is a most useful book which compresses into its 440 pages an astonishing amount of detailed information of the law and practice of income tax. It is clearly impossible to deal with the whole of that unpleasant subject in so short a compass, and this does not profess to be a textbook for experts. It is, however, a most useful guide for those who are not experts, and such practitioners as are in that category will find it of great assistance.

In the present edition references to the Income Tax Act, 1952, have replaced references to earlier enactments, but there is a table of comparison so that one can trace from one to the other. There is also an appendix showing all the rates of wear-and-tear allowances, and a very useful table of the various penalties which may be incurred. The text is conveniently divided by cross-headings which make it both clearer and more attractive, and there are a number of useful arithmetical examples. The price appears to include a supply of gummed amendment slips during the currency of the edition, and it cannot be regarded as anything other than a very reasonable one.

NOTES AND NEWS

Honours and Appointments

Mr. JOHN KYRLE HANKINSON, Registrar of the Brighton, Haywards Heath, and Worthing County Courts and District Registrar in the District Registry of the High Court of Justice in Brighton, has been appointed in addition the Registrar of the Chichester, Arundel and Petworth County Courts in succession to Mr. G. H. B. Peters, who has retired.

Mr. JOHN BERNARD PRENTIS, O.B.E., T.D., an Assistant Registrar, has been appointed the Registrar of the Brentford, Uxbridge and Watford County Courts in succession to Mr. H. Lloyd Williams.

It is announced by the Board of Trade that Mr. DONALD STOCKWELL has been appointed an Assistant Official Receiver for the Bankruptcy District of the County Courts of Bradford; Dewsbury, Halifax and Huddersfield, and also for the Bankruptcy District of the County Courts of Leeds; Harrogate; Scarborough; Wakefield and York.

It is announced by the Board of Trade that Mr. WILFRED WHITEHEAD has been appointed an Assistant Official Receiver in the Companies (Winding-Up) Department.

Mr. HARRY LLOYD WILLIAMS has been appointed the Registrar of the Croydon, Dorking, Epsom and Reigate County Courts in succession to the late Mr. Bruce Humfrey. Mr. Lloyd Williams has been relieved of the Registrarship of Brentford, Uxbridge and Watford Courts.

Wills and Bequests

Mr. William Norman Curtis, solicitor, of Bath, left £3,964 (£2,401 net).

Mr. Thomas Edward Sugden, solicitor, of Keighley, left £38,159 (£37,760 net).

Mr. Charles Selborne Walker, solicitor, of West Elba, left £24,294 (£23,712 net).

Mr. Cecil James Wray, solicitor, of London, formerly of New Zealand, left £12,677 (£12,283 net), £500 of which he left to the Solicitors' Benevolent Association.

Mr. Roger Evans, solicitor, of Bethesda, Caernarvonshire, left £12,336 (£12,248 net).

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